

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF PROPOSED RULEMAKING**

Z.C. Case No. 14-13

(Text Amendment – 11 DCMR)

(Text Amendment to Chapters 1, 4, 5, 6, 7, 8, 9, 12, 13, 14, 15, 16, 18, 19, 24, 26, 27, 28, 29, 31, and 33, Penthouse Regulations)

The Zoning Commission for the District of Columbia (Commission), pursuant to its authority under § 1 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, as amended; D.C. Official Code § 6-641.01 (2012 Repl.)), hereby gives notice of its intent to amend Chapters 1, 4, 5, 6, 7, 8, 9, 12, 13, 14, 15, 16, 18, 19, 24, 26, 27, 28, 29, and 31 of Title 11 (Zoning) of the District of Columbia Municipal Regulations (DCMR). The proposed rules would re-define most roof structures as “penthouses” and provide regulation for penthouse height, design, and uses. The proposed rules in part provide complimentary regulations needed to effectuate an amendment to the Height Act that for the first time permitted penthouses to be occupied by humans.

Final rulemaking action shall be taken no earlier than October 9, 2015, which is at least thirty (30) days from the date of publication of this notice in the *D.C. Register*.

Title 11 of the District of Columbia Municipal Regulations, ZONING, is amended as follows:

Chapter 1, THE ZONING REGULATIONS, § 199 DEFINITIONS, § 199.1 is amended as follows:

By inserting the following new definitions for “The Height Act” and “Penthouse” in alphabetical order:

Penthouse – A structure on or above the roof of any part of a building. The term includes all structures previously regulated as “roof structures” by § 411 prior to [THE EFFECTIVE DATE OF THIS AMENDMENT] including roof decks and mechanical equipment.

The Height Act - Act to Regulate the Height of Buildings in the District of Columbia, approved June 1, 1910 (36 Stat. 452, as amended; D.C. Official Code §§ 6-601.01 to 6-601.09).

By amending the definition of “Story” to delete the phrases “stairway or elevator” and “other roof structures; provided, that the total area of all roof structures located above the top story shall not exceed one-third (1/3) of the total roof area”; and by amending the definition of “Story, top” to delete the phrase “housing for mechanical equipment or stairway or elevator” so that the definitions will read as follows:

Story - the space between the surface of two (2) successive floors in a building or between the top floor and the ceiling or underside of the roof framing. The number of stories shall be counted at the point from which the height of the building is measured.

For the purpose of determining the maximum number of permitted stories, the term "story" shall not include cellars or penthouses.

Story, top - the uppermost portion of any building or structure that is used for purposes other than penthouses. The term "top story" shall exclude architectural embellishments.

Chapter 4, RESIDENCE DISTRICT: HEIGHT, AREA, AND DENSITY REGULATIONS, is amended as follows:

Section 400, HEIGHT OF BUILDINGS OR STRUCTURES (R), is amended as follows:

By amending § 400.1 to add the phrase “, not including the penthouse,” so that the entire subsection reads as follows:

400.1 Except as specified in this chapter and in chapters 20 through 25 of this title, the height of buildings or structures, not including the penthouse, in a Residence District shall not exceed that given in the following table:

By adding new §§ 400.5 and 400.6 to read as follows:

400.5 The height of a rooftop penthouse, except as restricted in §400.6, as measured from the surface of the roof upon which the penthouse is located, shall not exceed that given in the following table:

ZONE DISTRICT	Maximum Penthouse Height	Maximum Penthouse Stories
R-1-A, R-1-B, R-2, R-3, R-4, R-5-A	10 ft.	1
R-5-B	10 ft. except 15 ft. for mechanical equipment, stairway, and elevator overrides	1; second story permitted for mechanical equipment
R-5-C	10ft. except 18 ft. 6 in. for mechanical equipment, stairway, and elevator overrides	1; second story permitted for mechanical equipment
R-5-D	20 ft.	1 plus mezzanine; second story permitted for mechanical equipment
R-5-E	20 ft.	1 plus mezzanine; second story permitted for mechanical equipment

400.6 A non-residential building constructed pursuant to §§ 400.7 through 412 shall be permitted a penthouse of eighteen feet six inches (18 ft. 6 in.) in height maximum.

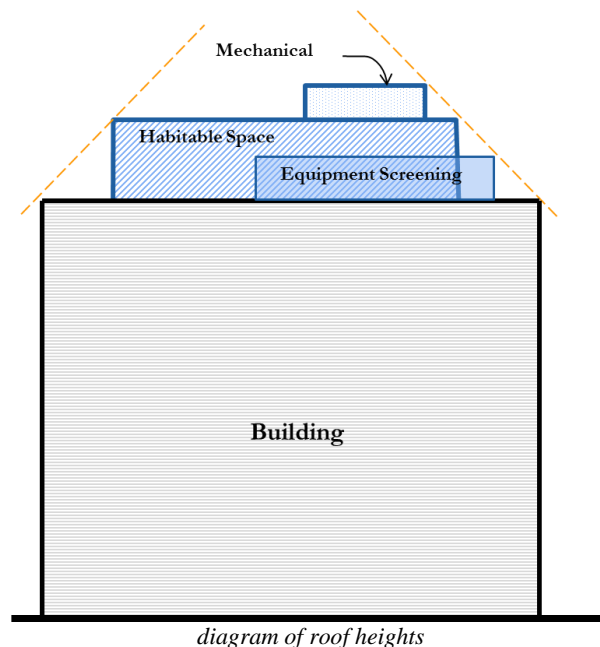
Subsection 400.7 is repealed.

Section 411, ROOF STRUCTURES (R), is retitled PENTHOUSES (R) and is amended to read as follows:

- 411.1 A penthouse permitted in this title shall comply with the conditions specified in this section.
- 411.2 For the purposes of this section, the term “mechanical space” refers to any enclosed penthouse space used for mechanical equipment, elevator over-run, or stairway; and the term “habitable space” refers to any enclosed penthouse space used for any purpose other than mechanical space as defined above.
- 411.3 RESERVED
- 411.4 A penthouse may house mechanical space or any use permitted within the zone, except as follows:
- (a) Habitable space within a penthouse on a detached dwelling, semi-detached dwelling, rowhouse or flat shall be limited pursuant to § 411.5 below;
 - (b) Within residential zones and the Capitol Interest Overlay in which the building is limited to forty feet (40 ft.) maximum penthouse use shall be limited to mechanical space and ancillary space associated with a rooftop deck, to a maximum area of twenty percent (20%) of the building roof area dedicated to rooftop unenclosed and uncovered deck, terrace, or recreation space;
 - (c) A nightclub, bar, cocktail lounge, or restaurant use shall only be permitted as a special exception if approved by the Board of Zoning Adjustment under § 3104; and
 - (d) Habitable space within the penthouse is not permitted on any building within an area bound by I Street, N.W. to the north; Constitution Avenue, N.W. to the south; 19th Street, N.W. to the west, and 13th Street, N.W. to the east.
- 411.5 Notwithstanding § 411.4, a penthouse, other than screening for rooftop mechanical equipment or a guard-rail for a roof deck required by the Building Code, shall not be permitted on the roof of a detached dwelling, semi-detached dwelling, rowhouse or flat in any zone; however, the Board of Zoning Adjustment may approve a penthouse as a special exception under § 3104, provided the penthouse:
- (a) Is no more than ten feet (10 ft.) in height and contains no more than one (1) story; and

- (b) Contains only stair or elevator access to the roof, and a maximum of thirty square feet (30 sq. ft.) of storage space ancillary to a rooftop deck.

- 411.6 All penthouses and mechanical equipment shall be placed in one (1) enclosure, and shall harmonize with the main structure in architectural character, material, and color; except that a rooftop egress stairwell enclosure not containing any other form of habitable or mechanical space may be contained within a separate enclosure.
- 411.7 Mechanical equipment shall be enclosed fully, except that louvers for the enclosing walls may be provided. A roof over a cooling tower need not be provided when the tower is located at or totally below the top of enclosing walls.
- 411.8 When roof levels vary by one (1) floor or more or when separate elevator cores are required, there may be one (1) enclosure for each elevator core at each roof level.
- 411.9 Enclosing walls of habitable space within the penthouse shall be of equal, uniform height as measured from roof level. Enclosing walls of mechanical space within the penthouse may be of the same height as the enclosing walls of habitable space, or may be of a single, different uniform height, and required screening walls around uncovered mechanical equipment may be of a single, different uniform height. The diagram that follows depicts a penthouse compliant with the requirements of this subsection.



- 411.10 Enclosing walls of a penthouse from roof level shall rise vertically to a roof, with a slope not exceeding twenty percent (20%) from vertical.
- 411.11 The Board of Zoning Adjustment may grant special exceptions under § 3104 from §§ 411.6 through 411.10, even if such structures do not meet the normal setback requirements of § 411.18, upon a showing that:
- (a) Operating difficulties such as meeting Building Code requirements for roof access and stairwell separation or elevator stack location to achieve reasonable efficiencies in lower floors; size of building lot; or other conditions relating to the building or surrounding area make full compliance unduly restrictive, prohibitively costly or unreasonable;
 - (b) The intent and purpose of this chapter and this title will not be materially impaired by the structure; and
 - (c) The light and air of adjacent buildings will not be affected adversely.
- 411.12 Penthouses shall not exceed one-third (1/3) of the total roof area upon which the penthouse sits in the following areas:
- (a) Zones where there is a limitation on the number of stories other than the C-3-B zone; and
 - (b) Any property fronting directly onto Independence Avenue, S.W. between 12th Street, S.W. and Second Street, S.W.
- 411.13 For the purposes of calculating floor area ratio for the building, the aggregate square footage of all space on all penthouse levels or stories measuring six and one-half feet (6.5 ft.) or more in height shall be included in the total floor area ratio permitted for the building, with the following exceptions:
- (a) Mechanical space;
 - (b) Habitable space devoted exclusively to communal rooftop recreation;
 - (c) Habitable space within a penthouse with a floor area ratio of less than four-tenths (0.4); and
 - (d) Mechanical equipment owned and operated as a roof structure by a fixed right-of-way public mass transit system.

- 411.14 Areas within curtain walls or screening without a roof, used where needed to give the appearance of one (1) structure, shall not be counted in floor area ratio, but shall be computed as a penthouse to determine if they comply with § 411.12.
- 411.15 The gross floor area of habitable space within a penthouses shall be included in calculations to determine the amount of off-street vehicle parking, bicycle parking, and loading as required elsewhere in this title; except that communal recreation space or other ancillary space associated with a rooftop deck shall not be included.
- 411.16 For residential buildings, the construction of penthouse GFA, including all forms of habitable space, is subject to the Inclusionary Zoning set-aside provisions of chapter 26.
- 411.17 For non-residential buildings, the construction of habitable penthouse GFA, including all forms of habitable space, shall trigger the affordable housing requirement as set forth in § 414.
- 411.18 Penthouses for mechanical or habitable space, screening around unenclosed mechanical equipment, rooftop platforms for swimming pools, and any guard rail on a roof shall be setback from the edge of the roof upon which it is located as follows:
- (a) A distance equal to its height from the following:
 - (1) Front building wall of the roof upon which it is located;
 - (2) Rear building wall of the roof upon which it is located;
 - (3) Side building walls of the roof upon which it is located in the R-1 through R-4 zones that are adjacent to a property that has a lower or equal permitted matter of right building height;
 - (4) Side building walls of the roof upon which it is located in other than the R-1 through R-4 zones that are adjacent to a property that has a lower permitted matter-of-right building height; and
 - (5) Adjacent property that is improved with a designated landmark or contributing structure to a historic district that is built to a lower height regardless of the permitted matter-of-right building height;
 - (b) A distance equal to one-half (0.5) of its height from any side building wall of the roof upon which it is located that is not adjoining another building wall and not meeting the conditions of (a)(3) through (5); and

- (c) A distance equal to two (2) times its height from any building wall of the roof upon which it is located which fronts onto Independence Avenue, S.W. between 12th Street, S.W. and 2nd Street, S.W., or fronting onto Pennsylvania Avenue, N.W. between 3rd Street, N.W. and 15th Street, N.W.
- 411.19 Except as required in §411.12 above, no setback is required from any side building wall that is adjoining another building wall with an equal or greater matter of right height.
- 411.20 For purposes of applying penthouse setbacks:
 - (a) Walls of buildings that border any courtyard other than closed courtyards shall be deemed to be exterior walls;
 - (b) Setbacks shall be applied to adjoining walls when the adjacent property has a lower matter-of-right height; and
 - (c) Setbacks shall be applied when the adjacent property is improved with a designated landmark or contributing structure to a historic district.
- 411.21 For the administration of this section, mechanical equipment shall not include telephone equipment, radio, television, or electronic equipment of a type not necessary to the operation of the building or structure. Antenna equipment cabinets and antenna equipment shelters shall be regulated by chapter 27 of this title.
- 411.22 For purposes of this section, skylights, gooseneck exhaust ducts serving kitchen and toilet ventilating systems, and plumbing vent stacks shall not be considered as penthouse structures.
- 411.23 Except as otherwise noted in this section, penthouse structures less than four feet (4 ft.) in height above a roof or parapet wall shall not be subject to the requirements of this section.
- 411.24 A request to add penthouse space to a building approved by the Zoning Commission as a planned unit development or through the design review requirements of chapters 16, 18, 28, or 29 prior to (EFFECTIVE DATE OF THIS AMENDMENT) may be filed as a minor modification for placement on the Zoning Commission consent calendar, pursuant to § 3030 provided:
 - (a) The item shall not be placed on a consent calendar for a period of thirty (30) days minimum following the filing of the application; and
 - (b) The Office of Planning shall submit a report with recommendation a minimum of seven (7) days in advance of the meeting.

- 411.25 In addition to meeting the requirements of § 3030, an application made pursuant to § 411.24 shall include:
- (a) A fully dimensioned copy of the approved and proposed roof-plan and elevations as necessary to show the changes;
 - (b) A written comparison of the proposal to the Zoning Regulations; and
 - (c) Verification that the affected ANC has been notified of the request.
- 411.25 Pursuant to § 5 of the Height Act, D.C. Official Code § 601.05 (h), a penthouse may be erected to a height in excess of that permitted therein if authorized by the Mayor or his or her designee and subject to the setback back and other restrictions stated in the Act.

By adding a new § 414, AFFORDABLE HOUSING PRODUCTION REQUIREMENT GENERATED BY CONSTRUCTION ON A NON-RESIDENTIAL BUILDING OF HABITABLE PENTHOUSE GROSS FLOOR AREA, to read as follows:

**414 AFFORDABLE HOUSING PRODUCTION REQUIREMENT
GENERATED BY CONSTRUCTION ON A NON-RESIDENTIAL
BUILDING OF HABITABLE PENTHOUSE GROSS FLOOR AREA**

- 414.1 The owner of a non-residential building proposing to construct habitable penthouse gross floor area (GFA) shall produce or financially assist in the production of residential uses that are affordable to low-income households, as those households are defined by § 2601.1, in accordance with this section.
- 414.2 The requirements of this provision shall be triggered by the filing of a building permit application that, if granted, would result in the amount of habitable penthouse gross floor area exceeding one thousand square feet (1,000 sq.ft.).
- 414.3 The requirements of this section shall not apply to properties owned by the District government or the Washington Metropolitan Area Transit Authority and used for government or public transportation purposes.
- 414.4 Qualifying residential uses include one-family dwellings, flats, multiple-family dwellings, including apartment houses, rooming houses, and boarding houses, but shall not include transient accommodations, all as defined in § 199.1.
- 414.5 If the owner constructs or rehabilitates the required housing, the provisions of §§ 414.7 through 414.11 shall apply,
- 414.6 The gross square footage of new or rehabilitated housing shall equal:

- (a) Not less than one-fourth (1/4) of the proposed habitable penthouse gross square footage if the required housing is situated on an adjacent property;
- (b) Not less than one-third (1/3) of the proposed habitable penthouse gross square footage if the location of the required housing does not comply with paragraph (a) of this subsection, but is nonetheless within the same Advisory Neighborhood Commission area as the property, or if it is located within a Housing Opportunity Area as designated in the Comprehensive Plan; and
- (c) Not less than one-half (1/2) of the proposed habitable penthouse gross square footage if the location of the required housing is other than as approved in paragraphs (a) and (b) above.

- 414.7 If the housing is provided as new construction, the average square feet of gross floor area per dwelling or per apartment unit shall be not less than eight hundred and fifty square feet (850 sq. ft.); provided, that no average size limit shall apply to rooming houses, boarding houses, or units that are deemed single-room occupancy housing.
- 414.8 For purposes of this section, the word "rehabilitation" means the substantial renovation of housing for sale or rental that is not habitable for dwelling purposes because it is in substantial violation of the Housing Regulations of the District of Columbia (14 DCMR).
- 414.9 In the case of rental housing, the required housing shall be maintained as affordable dwelling units for not less than twenty (20) years beginning on the issuance date of the first certificate of occupancy for the residential development, or if for a one (1)-family dwelling, the effective date of the first lease agreement.
- 414.10 If the required housing is provided for home ownership, it shall be maintained as affordable dwelling units for not less than twenty (20) years beginning on the issuance date of the first certificate of occupancy for the residential development, or if for a one-family dwelling, the effective date of the first sales agreement.
- 414.11 No certificate of occupancy shall be issued for the owner's building to permit the occupancy of habitable penthouse gross floor area until a certificate of occupancy has been issued for the housing required pursuant to this section.
- 414.12 If the owner instead chooses to contribute funds to a housing trust fund, as defined in § 2499.1, the provisions of §§ 414.13 through 414.16 shall apply.
- 414.13 The contribution shall be equal to one-half (1/2) of the assessed value of the proposed habitable penthouse gross floor area for office use.

- 414.14 The assessed value shall be the fair market value of the property as indicated in the property tax assessment records of the Office of Tax and Revenue no earlier than thirty (30) days prior to the date of the building permit application to construct the habitable penthouse gross floor area.
- 414.15 The contribution shall be determined by dividing the assessed value per square foot of land that comprises the lot upon which the building is or will be located by the maximum permitted non-residential FAR and multiplying that amount times the penthouse non-residential gross square feet to be constructed.
- 414.16 Not less than one-half (1/2) of the required total financial contribution shall be made prior to the issuance of a building permit for construction of the habitable penthouse gross floor area, and the balance of the total financial contribution shall be made prior to the issuance of a certificate of occupancy for any or all of the building's habitable penthouse gross floor area.

Chapter 5, SPECIAL PURPOSE DISTRICTS, is amended as follows:

Section 530, HEIGHT (SP), is amended as follows:

By amending § 530.1 to add the phrase “, not including a penthouse,” so that the entire subsection reads as follows:

- 530.1 Except as specified in §§ 530 through 537 and in chapters 20 through 25 of this title, the height of buildings or structures, not including a penthouse, in an SP District shall not exceed the height set forth in the following table:

By amending § 530.4 to delete the phrase “over elevator shafts” so that the entire subsection reads as follows:

- 530.4 Spires, towers, domes, pinnacles or minarets serving as architectural embellishments, penthouses, ventilator shafts, antennas, chimneys, smokestacks, or fire sprinkler tanks may be erected to a height in excess of that which this section otherwise authorizes. This section shall not be interpreted to bypass otherwise required special exception reviews.

By amending § 530.5 to read as follows:

- 530.5 A penthouse may be erected to a height in excess of that which this section otherwise authorizes but shall not exceed the height, as measured from the surface of the roof upon which the penthouse is located, in the following table:

ZONE DISTRICT	Maximum Penthouse Height	Maximum Penthouse Stories
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SP-1	10 ft. except 18 ft. 6 in. for mechanical equipment, stairway, and elevator overrides	1; second story permitted for mechanical equipment
SP-2	20 ft.	1 plus mezzanine; second story permitted for mechanical equipment

Subsections 530.5 and 530.6 are repealed.

Section 537, ROOF STRUCTURES (SP) is renamed PENTHOUSES (SP), and is amended as follows:

By amending § 537.1 to replace the phrase “roof structures” with “penthouses” so that the subsection reads as follows:

537.1 The provisions of § 411 shall also regulate penthouses in SP Districts.

Subsection 537.2 is repealed.

Chapter 6, MIXED USE, COMMERCIAL RESIDENTIAL) DISTRICTS, is amended as follows:

Section 630, HEIGHT (CR), is amended as follows:

By amending § 630.1 to add the phrase “, not including a penthouse,” so that the entire subsection reads as follows:

630.1 Except as provided in this section, the height of buildings and structures, not including a penthouse, shall not exceed ninety feet (90 ft.).

Subsection § 630.4 is amended to read as follows:

630.4 A penthouse may be erected to a height in excess of that which this section otherwise authorizes, but shall not exceed a height of twenty feet (20 ft.) or one (1) story, as measured from the surface of the roof upon which the penthouse sits. A mezzanine for habitable or mechanical space is permitted; and a second story is permitted for mechanical equipment only.

Subsection 630.5 is repealed.

Section 639, ROOF STRUCTURES (CR) is renamed PENTHOUSES (CR), and is amended as follows:

By amending § 639.1 to replace the phrase “roof structures” with “penthouses” to read as follows:

639.1 The provisions of § 411 shall also regulate penthouses in CR Districts.

Subsection 639.2 is repealed,

Chapter 7, COMMERCIAL DISTRICTS, is amended as follows:

Section 770, HEIGHT OF BUILDINGS AND STRUCTURES (C), is amended as follows:

By amending § 770.1 to add the phrase “, not including a penthouse,” so that the entire subsection reads as follows:

770.1 Except as provided in this section and in chapters 17 and 20 through 25 of this title, the height of a building or structure, not including a penthouse, in a Commercial District shall not exceed that set forth in the following table:

Subsection § 770.3 is amended by deleting the phrase “over elevator shafts” so that the entire subsection reads as follows:

770.3 Spires, towers, domes, pinnacles or minarets serving as architectural embellishments, penthouses, ventilator shafts, antennas, chimneys, smokestacks, or fire sprinkler tanks may be erected to a height in excess of that which this sections otherwise authorizes. This section shall not be interpreted to bypass otherwise required special exception reviews.

Subsection 770.6 is amended to read as follows:

770.6 A penthouse may be erected to a height in excess of that which this section otherwise authorizes but shall not exceed the height, as measured from the surface of the roof upon which the penthouse is located, in the following table:

ZONE DISTRICT	Maximum Penthouse Height	Maximum Penthouse Stories
C-1, C-2-A	10 ft. except 15 ft. for mechanical equipment, stairway, and elevator overrides	1; second story permitted for mechanical equipment
C-2-B, C-3-A	10 ft. except 18 ft. 6 in. for mechanical equipment, stairway, and elevator overrides	1; second story permitted for mechanical equipment
C-2-B-1, C-3-B	20 ft.	1; second story permitted for mechanical equipment
C-2-C; C-3-C; C-4; C-5	20 ft.	1 plus mezzanine; second story permitted for mechanical equipment

Subsections 770.7 and 770.8 are repealed.

Section 777, ROOF STRUCTURES (C) is renamed PENTHOUSES (C), and is amended as follows:

By amending § 777. to replace the phrase “roof structures” with “penthouses” to read as follows:

777.1 The provisions of § 411 shall also regulate penthouses in the Commercial Districts.

Subsection 777.2 is repealed.

Chapter 8, INDUSTRIAL DISTRICTS, is amended as follows:

Section 840, HEIGHT OF BUILDINGS AND STRUCTURES (C-M, M), is amended as follows:

By amending § 840.1 to add the phrase “, not including a penthouse,” so that the entire subsection reads as follows:

840.1 Except as provided in § 840.2 and in chapters 20 through 25 of this title, the height of buildings or structures, not including a penthouse, in an Industrial District shall not exceed that given in the following table:

By amending § 840.2 to delete the phrase “over elevator shafts” so that the entire subsection reads as follows:

840.2 Spires, towers, domes, pinnacles or minarets serving as architectural embellishments, penthouses, ventilator shafts, antennas, chimneys, smokestacks, or fire sprinkler tanks may be erected to a height in excess of that which this section otherwise authorizes. This section shall not be interpreted to bypass otherwise required special exception reviews.

Subsection 840.3 is amended to read as follows:

840.3 A penthouse may be erected to a height in excess of that which this section otherwise authorizes but shall not exceed the height, as measured from the surface of the roof upon which the penthouse is located, in the following table:

ZONE DISTRICT	Maximum Penthouse Height	Maximum Penthouse Stories
CM-1	10 ft. except 15 ft. for mechanical equipment, stairway, and elevator overrides	1; second story permitted for mechanical equipment
CM-2	10 ft. except 18 ft. 6 in. for mechanical	1; second story permitted for

	equipment, stairway, and elevator overrides	mechanical equipment
CM-3, M	20 ft.	1 plus mezzanine; second story permitted for mechanical equipment

Subsections 840.4 and 840.5 are repealed.

Section 845, ROOF STRUCTURES (C-M, M) is renamed PENTHOUSES (C-M, M), and is amended as follows:

By amending § 845.1 to replace the phrase “roof structures” with “penthouses” to read as follows:

845.1 Section 411 shall be applicable to penthouses in the Industrial Districts.

Subsection 845.2 is repealed.

Chapter 9, WATERFRONT DISTRICTS, is amended as follows:

Section 930, HEIGHT OF BUILDINGS AND STRUCTURES (W), is amended as follows:

By amending § 930.1 to add the phrase “, not including a penthouse,” so that the entire subsection reads as follows:

930.1 Except as provided in this section, the height of buildings and structures, not including a penthouse, shall not exceed the maximum height in the following table:

By amending § 930.2.3 to delete the phrase “over elevator shafts” so that the entire subsection reads as follows:

930.2 Spires, towers, domes, pinnacles or minarets serving as architectural embellishments, penthouses, ventilator shafts, antennas, chimneys, smokestacks, or fire sprinkler tanks may be erected to a height in excess of that which this section otherwise authorizes. This section shall not be interpreted to bypass otherwise required special exception reviews or mayoral approvals.

Subsection 930.3 is amended to read as follows:

930.3 A penthouse may be erected to a height in excess of that which this section otherwise authorizes but shall not exceed the height, as measured from the surface of the roof upon which the penthouse is located, in the following table:

ZONE DISTRICT	Maximum Penthouse Height	Maximum Penthouse Stories
W-0; W-1	10 ft. except 15 ft. for mechanical equipment, stairway, and elevator overrides	1; second story permitted for mechanical equipment
W-2	10 ft., except 18 ft. 6 in. for mechanical equipment, stairway, and elevator overrides	1; second story permitted for mechanical equipment
W-3	20 ft.	1 plus mezzanine; second story permitted for mechanical equipment

Subsection 930.4 is repealed.

Section 936, ROOF STRUCTURES (W) is renamed PENTHOUSES (W), and is amended as follows:

By amending § 936.1 to replace the phrase “roof structures” with “penthouses” to read as follows:

936.1 The provisions of § 411 shall apply to penthouses in the Waterfront Districts.

Subsection 936.2 is repealed

Chapter 12, CAPITOL INTEREST OVERLAY DISTRICT, is amended as follows:

Section 1203, HEIGHT, AREA, AND BULK REGULATIONS, is amended as follows:

By amending § 1203.2(a) to delete the phrase “over elevator shaft”, and to replace § 1203.2(b) in its entirety so that the entire subsection reads as follows:

1203.2 The height of buildings or structures as specified in § 1203.1 may be exceeded in the following instances:

- (a) A spire, tower, dome, minaret, pinnacle, or penthouse may be erected to a height in excess of that authorized in § 1203.1; and
- (b) If erected or enlarged, a penthouse may be erected to a height in excess of that authorized in the zone district in which located; provided that:
 - (1) It meets the requirements of § 411; and
 - (2) It does not exceed ten feet (10 ft.) or one (1) story in height above the roof upon which it is located.

Subsection 1203.4 is repealed.

Chapter 13, NEIGHBORHOOD COMMERCIAL OVERLAY DISTRICT, is amended as follows:

Section 1305, PLANNED UNIT DEVELOPMENT GUIDELINES, is amended as follows:

By amending § 1305.1 to add the word “penthouse” to read as follows:

1305.1 In the NC Overlay District, the matter-of-right height, penthouse, and floor area ratio limits shall serve as the guidelines for planned unit developments.

Section 1307, WOODLEY PARK NEIGHBORHOOD COMMERCIAL OVERLAY DISTRICT, is amended as follows:

The existing §§ 1306.7 and 1307.8 are renumbered 1307.8 and 1306.9, respectively.

A new § 1307.7 is added to read as follows:

1307.7 A penthouse within the WP/C-2-A or WP/C-2-B Overlay Districts may be erected to a height in excess of that authorized in the zone district in which located; provided, that:

- (a) The maximum permitted height shall be ten feet (10 ft.) above the roof upon which it is located, except that the maximum permitted height for a penthouse for mechanical equipment, stairway, and elevator overrides shall be fifteen feet (15 ft.); and
- (b) The maximum permitted number of stories within the penthouse shall be one (1) except that a second story for mechanical equipment only shall be permitted.

Section 1309, EIGHTH STREET SOUTHEAST NEIGHBORHOOD COMMERCIAL OVERLAY DISTRICT, is amended by adding a new § 1309.8 to read as follows:

1309.8 A penthouse within the ES Overlay District may be erected to a height in excess of that authorized in the zone district in which located; provided, that:

- (a) The maximum permitted height shall be ten feet (10 ft.) above the roof upon which it is located, except that the maximum permitted height for a penthouse for mechanical equipment, stairway, and elevator overrides shall be fifteen feet (15 ft.); and

- (b) The maximum permitted number of stories within the penthouse shall be one (1).

Chapter 14, REED-COOKE OVERLAY DISTRICT, is amended as follows:

Section 1402, HEIGHT AND BULK PROVISIONS, is amended as follows:

Subsection 1402.2 is amended to read as follows:

1402.2 For the purpose of this chapter, no planned unit development shall exceed the matter-of-right building height, bulk, and area requirements or penthouse provisions of the underlying district.

By adding new §§ 1402.4 and 1402.5 to read as follows:

1402.4 If erected or enlarged as provided in § 411, a penthouse within the RC/C-2-A or RC/R-5-B Overlay Districts may be erected to a height in excess of that authorized in the zone district in which located; provided, that:

- (a) The maximum permitted height shall be ten feet (10 ft.) above the roof upon which it is located, except that the maximum permitted height for a penthouse for mechanical equipment, stairway, and elevator overrides shall be fifteen feet (15 ft.);
- (b) The maximum permitted number of stories within the penthouse shall be one (1); and
- (c) It shall contain no form of habitable space, other than ancillary space associated with a rooftop deck, to a maximum area of twenty percent (20%) of the building roof area dedicated to rooftop deck, terrace, or recreation space.

1402.5 A penthouse within the RC/C-2-B Overlay District may be erected to a height in excess of that authorized in the zone district in which located; provided, that:

- (a) The maximum permitted height shall be ten feet (10 ft.) above the roof upon which it is located, except that the maximum permitted height for a penthouse for mechanical equipment, stairway, and elevator overrides shall be fifteen feet (15 ft.); and
- (b) The maximum permitted number of stories within the penthouse shall be one (1), except that a second story for mechanical equipment only shall be permitted.

Chapter 15, MISCELLANEOUS OVERLAY DISTRICTS, is amended as follows:

Section 1503, PLANNED UNIT DEVELOPMENT (DC), § 1503.1 is amended read as follows:

1503.1 In the DC Overlay District, the matter-of-right building height, penthouse height, and floor area ratio limits shall serve as the maximum permitted building height, penthouse height, and floor area ratio for a planned unit development.

Section 1524, PLANNED UNIT DEVELOPMENT (FB), § 1524.1 is amended to read as follows:

1524.1 In the FB Overlay District, the matter-of-right building height, penthouse height, and floor area ratio limits shall serve as the maximum permitted building height, penthouse height, and floor area ratio for planned unit developments.

Section 1534, HEIGHT, AREA, AND BULK REGULATIONS (NO), § 1524.4 is amended to read as follows:

1534.4 Except as limited in § 411.5, a penthouse within the NO Overlay District may be erected to a height in excess of that authorized in the zone district in which located; provided, that

- (a) The maximum permitted height shall be ten feet (10 ft.) above the roof upon which it is located, except that the maximum permitted height for a penthouse for mechanical equipment, stairway, and elevator overrides shall be fifteen feet (15 ft.);
- (b) The maximum permitted number of stories within the penthouse shall be one (1); and
- (c) It shall contain no form of habitable space, other than ancillary space associated with a rooftop deck, to a maximum area of twenty percent (20%) of the building roof area dedicated to rooftop deck, terrace, or recreation space.

Section 1563, HEIGHT, BULK, AND USE PROVISIONS (FT), § 1563.4 is amended to read as follows:

1563.4 The maximum bulk and height of a new building for a newly established use in the underlying CR District shall be 5.0 FAR and eighty-feet (80 ft.) in height, inclusive of a penthouse, which shall be limited to one (1) story maximum.

Section 1572, HEIGHT AND FLOOR AREA RATIO RESTRICTIONS (CHC), is amended by adding a new § 1572.5 to read as follows:

1572.5 A penthouse within the CHC Overlay District shall conform to the height and use provisions in the underlying Commercial District.

Chapter 16, CAPITOL GATEWAY OVERLAY DISTRICT, is amended as follows:

Section 1601, BONUS DENSITY AND HEIGHT (CG), is amended by adding a new § 1601.7 to read as follows:

1601.7 The provisions of § 411 shall apply to penthouses in the CG Overlay.

Chapter 18, SOUTHEAST FEDERAL CENTER OVERLAY DISTRICT, is amended as follows:

Section 1806, PLANNED UNIT DEVELOPMENT, is amended as follows:

By amending § 1806.1 to add the words “penthouse height” to read as follows:

1806.1 The matter-of-right height, penthouse height, and floor area ratio limits shall serve as the maximums permitted building height, penthouse height, and floor area ratio for a planned unit development (PUD) in the SEFC Overlay District.

By adding a new § 1811, PENTHOUSES, to read as follows:

1811 PENTHOUSES

1811.1 The provisions of § 411 shall apply to penthouses in the SEFC Overlay.

Chapter 19, UPTOWN ARTS-MIXED USE (ARTS) OVERLAY DISTRICT, § 1902, HEIGHT AND BULK, § 1902.1(a) is amended to add the phrase “or exceed one (1) story” to read as follows:

1902.1 ...
 (a) No penthouse permitted by this title shall exceed a height of eighty-three and one-half feet (83.5 ft.) above the measuring point used for the building, or exceed one (1) story; and

Chapter 24, PLANNED UNIT DEVELOPMENT PROCEDURES, is amended as follows:

Section 2405, PUD STANDARDS, is amended as follows:

Subsection 2405.1 is amended to read as follows:

2405.1 Except as limited by an overlay, no building or structure shall exceed the maximum height permitted in the least restrictive zone district within the project area as indicated in the following table; and no penthouse shall exceed the maximum height permitted; provided, that the Commission may authorize minor deviations for good cause pursuant to § 2405.3:

ZONE DISTRICT	MAXIMUM HEIGHT	MAXIMUM PENTHOUSE HEIGHT
R-1-A, R-1-B, R-2, R-3, C-1, W-0	40 ft.	10 ft. /1 story
R-4, R-5-A, R-5-B, W-1, C-M-1	60 ft.	15 ft./1 story; second story permitted for mechanical equipment
W-2	60 ft.	18 ft. 6 in./1 story; second story permitted for mechanical equipment
C-2-A	65 ft.	18 ft. 6 in./1 story; second story permitted for mechanical equipment
R-5-C, SP-1	75 ft.	20 ft./1 story; second story permitted for mechanical equipment
R-5-D, R-5-E, SP-2, C-2-B, C-2-B-1, C-2-C, C-3-A, C-3-B, W-3, C-M-2, C-M-3, M	90 ft.	20 ft. /1 story plus mezzanine; second story permitted for mechanical equipment
CR	110 ft.	20 ft./1 story plus mezzanine; second story permitted for mechanical equipment
C-3-C, C4, C-5 (PAD)	130 ft.	20 ft. /1 story plus mezzanine; second story permitted for mechanical equipment
C-5 (PAD) (Where permitted by the Building Height Act of 1910, D.C. Official Code § 6-601.05(b) (formerly codified at D.C. Code §5-405(b) (1994 Repl.)), along the north side of Pennsylvania Avenue)	160 ft.	20 ft./1 story plus mezzanine; second story permitted for mechanical equipment

By amending § 2405.3 (a) to add the word “building” so that the entire subsection reads as follows:

2405.3 The Commission may authorize the following increases; provided, that the increase is essential to the successful functioning of the project and consistent with the purpose and evaluation standards of this chapter, or with respect to FAR, is for the purpose of a convention headquarters hotel on Square 370:

- (a) Not more than five percent (5%) in the maximum building height but not the maximum penthouse height; or

- (b) Not more than five percent (5%) in the maximum floor area ratio.

Chapter 26, INCLUSIONARY ZONING, is amended as follows:

Section 2602, APPLICABILITY, is amended as follows:

By amending § 2602.1 to add a new subsection (d) so that the entire subsection reads as follows:

2602.1 Except as provided in § 2602.3, the requirements and incentives of this chapter shall apply to developments that:

- (a) Are mapped within the R-2 through R-5-D, C-1 through C-3-C, USN, CR, SP, StE, and W-1 through W-3 Zone Districts, unless exempted pursuant to § 2602.3;
- (b) Have ten (10) or more dwelling units (including off-site inclusionary units);
- (c) Are either:
 - (1) New multiple-dwellings;
 - (2) New one (1)-family dwellings, row dwellings, or flats constructed concurrently or in phases on contiguous lots or lots divided by an alley, if such lots were under common ownership at the time of construction;
 - (3) An existing development described in subparagraph (i) or (ii) for which a new addition will increase the gross floor area of the entire development by fifty percent (50%) or more; and
- (d) Is a residential building, other than a one (1)-family dwelling or flat, that has habitable penthouse gross floor area pursuant to § 411.

By amending § 2602.3(a) and (e) to add the phrase “Except for new habitable penthouse gross floor area as described in § 2602.1(d)” so that the entire subsection reads as follows:

2602.3 This chapter shall not apply to:

- (a) Hotels, motels, or inns, except for new habitable penthouse gross floor area as described in § 2602.1(d);

- (b) Dormitories or housing developed by or on behalf of a local college or university exclusively for its students, faculty, or staff;
- (c) Housing that is owned or leased by foreign missions exclusively for diplomatic staff;
- (d) Rooming houses, boarding houses, community-based residential facilities, single room occupancy developments; or
- (e) Except for new habitable penthouse gross floor area as described in § 2602.1(d), properties located in any of the following areas:
 - (1) The Downtown Development or Southeast Federal Center Overlay Districts;
 - (2) The Downtown East, New Downtown, North Capitol, Southwest, or Capitol South Receiving Zones on February 12, 2007;
 - (3) The W-2 zoned portions of the Georgetown Historic District;
 - (4) The R-3 zoned portions of the Anacostia Historic District;
 - (5) The C-2-A zoned portion of the Naval Observatory Precinct District; and
 - (6) The Eighth Street Overlay.

Section 2603, SET-ASIDE REQUIREMENTS, is amended as follows:

By amending § 2603.1 to add the phrase “including habitable penthouse gross floor areas as described in § 2602.1(d),” to read as follows:

2603.1 Except as provided in § 2603.8, an inclusionary development for which the primary method of construction does not employ steel and concrete frame structure located in an R-2 through an R-5-B District or in a C-1, C-2-A, W-0 or W-1 District shall devote the greater of ten percent (10%) of the gross floor area being devoted to residential use including habitable penthouse gross floor area as described in § 2602.1(d), or seventy-five percent (75%) of the bonus density being utilized for inclusionary units.

By amending § 2603.2 to add the phrase “including habitable penthouse gross floor area as described in § 2602.1(d),” to read as follows:

2603.2 An inclusionary development of steel and concrete frame construction located in the zone districts stated in § 2603.1 or any development located in a C-2-B, C-2-B-1, C-2-C, C-3, CR, R-5-C, R-5-D, R-5-E, SP, USN, W-2 or W-3 District shall devote the greater of eight percent (8%) of the gross floor area being devoted to residential use including floor area devoted to habitable penthouse gross floor area as described in § 2602.1(d), or fifty percent (50%) of the bonus density being utilized for inclusionary units.

By adding a new § 2603.5 to read as follows:

2603.5 Notwithstanding §§ 2603.3 and 2603.4, one hundred percent (100%) of inclusionary units resulting from the set aside required for habitable penthouse gross floor area shall set aside for eligible low income households.

Section 2607, OFF-SITE COMPLIANCE, is amended by adding a new § 2607.9 to read as follows:

2607.9 Inclusionary Units resulting from the set-aside required for habitable penthouse gross floor area as described in o § 2602.1(d) shall be provided within the building, except that the affordable housing requirement may be achieved by providing a contribution to a housing trust fund, consistent with the provisions of §§ 414.13 through 414.16 when:

- (a) The new habitable penthouse gross floor area is being provided as an addition to an existing building which is not otherwise undergoing renovations or additions that would result in a new or expanded Inclusionary Zoning requirement within the building;
- (b) The habitable penthouse gross floor area is being provided on an existing or new building not otherwise subject to Inclusionary Zoning requirements; or
- (c) The building is not otherwise required to provide inclusionary units for low income households and the amount of habitable penthouse gross floor area would result in a gross floor area set-aside less than the gross floor area of the smallest dwelling unit within the building.

Section 2608, APPLICABILITY DATE, is amended as follows:

By amending § 2608.2 to add the phrase “With the exception of habitable penthouse gross floor area approved by the Zoning Commission pursuant to § 411.20”, to read as follows:

2608.2 With the exception of habitable penthouse gross floor area approved by the Zoning Commission pursuant to § 411.24 the provisions of this chapter shall not apply to any building approved by the Zoning Commission pursuant to chapter 24 if the approved application was set down for hearing prior to March 14, 2008.

Chapter 27, REGULATIONS OF ANTENNAS, ANTENNA TOWERS, AND MONOPOLES, Section 2707, EXEMPTED ANTENNAS, § 2707.1(b) is amended to remove all references to roof structures so that the entire subsection reads as follows:

2707.1 The requirements of §§ 2703 through 2706 shall not apply to any antenna that is:

- (a) Entirely enclosed within a building but is not the primary use within the building;
- (b) Entirely enclosed on all sides by a penthouse, or an extension of penthouse walls; this subsection shall not be interpreted to permit penthouses in excess of the permitted height above the roof upon which it is located;
- (c) Located entirely behind and no taller than the parapet walls; or
- (d) No taller than eighteen inches (18 in.) in height and necessary for the implementation of expanded 911 or emergency communications.

Chapter 28, HILL EAST (HE) DISTRICT, is amended as follows:

Section 2809 is renamed “PENTHOUSES (HE)” and is amended as follows:

By amending § 2809.1 to delete the phrase “and 400.7”so that the subsection reads as follows:

2809.1 The provisions of § 411 shall apply to penthouses in the HE District.

Subsection 2809.2 is amended to read as follows:

2809.2 The height of a rooftop penthouse as measured from the surface of the roof upon which the penthouse is located shall not exceed that given in the following table:

ZONE DISTRICT	Maximum Penthouse Height	Maximum Penthouse Stories
HE-1	10 ft. except 15 ft. for mechanical equipment, stairway, and elevator overrides	1; second story permitted for mechanical equipment
HE-2	20 ft.	1; second story permitted for mechanical equipment
HE-3, HE-4	20 ft.	1 plus mezzanine; second story

		permitted for mechanical equipment
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Chapter 29, UNION STATION NORTH (USN) DISTRICT, is amended as follows:

Section 2906 is renamed “PENTHOUSES” is amended as follows:

Subsections 2906.1 and 2906.2 are amended to read as follows:

2906.1 The provisions of § 411 shall apply to penthouses in the USN District.

2906.2 A penthouse may be erected to a height in excess of that permitted in § 2905 but shall not exceed the height, as measured from the surface of the roof upon which the penthouse is located, in the following table:

ZONE DISTRICT	Maximum Penthouse Height	Maximum Penthouse Stories
USN	20 ft.	1 plus mezzanine; second story permitted for mechanical equipment

Subsections 2906.3 and 2906.4 are repealed.

Chapter 31, BOARD OF ZONING ADJUSTMENT RULES OF PRACTICE AND PROCEDURE, is amended as follows:

Section 3104 SPECIAL EXCEPTIONS, is amended as follows:

By amending the table in § 3104.1 to add special exception provisions for “Nightclub, bar, cocktail lounge or restaurant within a penthouse” and “Penthouses above a single family dwelling or flat” and by changing the title of the amending the special exception provisions for “Roof structures - location, design, number, and all other regulated aspects” by replacing the phrase “Roof structures” with “Penthouses” so that the new and amended to read as follows:

TYPE OF SPECIAL EXCEPTION	ZONE DISTRICT	SECTIONS IN WHICH THE CONDITIONS ARE SPECIFIED
Nightclub, bar, cocktail lounge or restaurant within a penthouse	Any District where use permitted within a building.	411.4
Penthouses - above a single family dwelling or flat	Any District	411.5

Penthouses - location, design, number, and all other regulated aspects	Any District	§§ 411.11
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Chapter 33, SAINT ELIZABETHS EAST CAMPUS (StE) DISTRICT, is amended as follows:

Section 3301 FLOOR-AREA-RATIO (FAR), HEIGHT, LOT OCCUPANCY, REAR YARD SETBACK, MINIMUM LOT AREA, AND SETBACKS, and § 3301.2 is amended to add the phrase “, not including a penthouse” so that the subsection reads as follows:

3301.1 Except as provided in this section, the FAR, height of a building or structure, not including a penthouse, lot occupancy and rear yard in a StE District shall not exceed or be less than that set forth in the following table:

Section 3312, ROOF STRUCTURES is renamed “PENTHOUSES” and is amended as follows:

By replacing § 3312.1 is amended to read as follows:

3312.1 The provisions of §§ 411 shall apply to penthouses in the StE Districts.

By adding a new § 3312.2 to read as follows:

3312.2 A penthouse may be erected to a height in excess of that permitted in § 3301 but shall not exceed the height, as measured from the surface of the roof upon which the penthouse sits, in the following table:

ZONE DISTRICT	Maximum Penthouse Height	Maximum Penthouse Stories
StE-1, StE-4, StE-8, StE-10, StE-11, StE-14, StE-7 pursuant to § 3301.4(b)	10 ft. except 15 ft. for mechanical equipment, stairway, and elevator overrides	1; second story permitted for mechanical equipment
StE-2, StE-5, StE-9	10 ft. except 18 ft. 6 in. for mechanical equipment, stairway, and elevator overrides	1; second story permitted for mechanical equipment
StE-3, StE-12, StE-15, StE-17 StE-7 pursuant to § 3301.4(a)	20 ft.	1; second story permitted for mechanical equipment
StE-6, StE-13, StE-18	20 ft.	1 plus mezzanine; second story permitted for mechanical equipment

All persons desiring to comment on the subject matter of this proposed rulemaking action should file comments in writing no later than thirty (30) days after the date of publication of this notice in the *D.C. Register*. Comments should be filed with Sharon Schellin, Secretary to the Zoning Commission, Office of Zoning, 441 4th Street, N.W., Suite 200-S, Washington, D.C. 20001, or

electronic submissions may be submitted in PDF format to zcsubmissions@dc.gov. Ms. Schellin may be contacted by telephone at (202) 727-6311 or by email at Sharon.Schellin@dc.gov. Copies of this proposed rulemaking action may be obtained at cost by writing to the above address.